IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 732 of 2001.

Decided on: 28.05.2007.

Jagdish Parkash Karol

… … … Petitioner.

Versus

State of Himachal Pradesh & Others .

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner:	**Mr. K.D. Sood, Advocate.**
For Respondents No.1 to 4:	**Mr. M.S. Chandel, Advocate General with Meenakshi Sharma, Deputy Advocate General.**
For Respondent No.5:	**Mr. Bhuvnesh Sharma and Mr. Ramakant Sharma, Advocates.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the respondent No.5-Society was formed in the year 1967 under the Himachal Pradesh Cooperative Societies Act, 1968.

The petitioner submitted an application for enrollment as member of the respondent No.5-Society on 2nd September, 1993. His application was rejected by the respondent no.5 on 18th September, 1993. He preferred an appeal before the Registrar,

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Whether reporters of local papers may be allowed to see the judgment? Yes.

Cooperative Societies. The appeal was allowed by the Assistant Registrar, Cooperative Societies on 28.12.1993. The Assistant Registrar, Cooperative Societies directed the respondent No.5 to enroll the petitioner as member of the Society with immediate effect. The respondent No.5-Society did not take any action on the basis of the directions issued by the Assistant Registrar, Cooperative Societies on 28.12.1993. The Additional Registrar, Cooperative Societies passed the order dated 9th September, 1996 allowing the revision and remanded the matter to the Assistant Registrar, Cooperative Societies, Dehra. He had submitted before the Assistant Registrar, Cooperative Societies that the resolution dated 30.6.1991 passed by the Society amending the Bye Laws No.7 was of no consequence and the same was passed to restrict his enrollment. The Assistant Registrar, Cooperative Societies, Dehra directed the respondent No.5 to enroll the petitioner as its member vide order dated 20.1.1997. The respondent No.5 filed appeal before the Secretary, Cooperative Societies against the order of Assistant Registrar, Cooperative Societies. The appeal was dismissed vide order dated 29.3.1997. The respondent No.5 filed another appeal for review of order dated 29.3.1997. The same was also dismissed on 28.10.1998. The respondent No.5 thereafter approached the Secretary, Cooperative Societies to suo moto review the order dated 28.10.1998. The under Secretary (Cooperation) to the Government of Himachal Pradesh vide order dated 16.2.2001 allowed the appeal of respondent No.5.

Mr. Kapil Dev Sood has strenuously argued that the orders dated 9.9.1996 and 16th February, 2001 are without jurisdiction. The learned Advocate General had supported the orders dated 9.9.1996 and 16.02.2001. Mr. Bhuvnesh Sharma had also supported the impugned orders.

I have heard the parties and perused the record.

The respondent No.5 had passed the resolution dated 30.6.1991 which reads as under:-

> **"Today on 30.6.91 the General House of the Dehra Friends Co-operative Transport Society, H.P. Dehra was held under the Chairmanship of Narinder Paul Sharma.**
>
> **x x x x x x x x x**
>
> **No. of members present in the house-69.**
> **Resolution at Page-57.**
>
> **The matter regarding the Area of operation is discussed and it is decided that the members of the Society belonging to Dehra Sub Div and Tehsil Amb who are already continuing as members, will remain as it is and in future no new member will be entertained/admitted from any area of operation. Only existing members can transfer their share to others.**
>
> **Secretary**
>
> **Sd/- x x x x**
>
> **Signatures of Chairman**
> **30.6.91**
> **The Dehra Friends Co-op. Tpt Society Limited, H.O., Dehra Kangra."**

Section 7 of the Himachal Pradesh Cooperative Societies Act, 1968 prescribes the procedure for application for registration of a Cooperative Society. It is also stipulated therein that every

application preferred under sub-section (1) of Section 7 shall be accompanied by three copies of bye laws of the Cooperative Societies. Section 11 is reproduced as under:-

> **"11. Amendment of bye-laws of a co-operative society. – (1) No amendment of any bye-law of a Co-operative Society shall be valid unless approved by the resolution of a general meeting and registered under this Act for which purpose three copies of the amendment shall be forwarded to the Registrar as prescribed.**
>
> **(2) If the Registrar is satisfied that the proposed amendment –**
>
> **(i) is not contrary to the provisions of this Act and the Rules,**
>
> **(ii) does not conflict with co-operative principles,**
>
> **(iii) will promote the economic or social interest of the members of the society,**
>
> **(iv) is not inconsistent with the principles of social justice, he may register the amendment.**
>
> **(3) When the Registrar registers an amendment, he shall forward to the society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered.**
>
> **(4) Where the Registrar refuses to register an amendment of the bye-laws, of a co-operative society, he shall communicate the order of refusal together with the reasons therefore to the society.**

(5) Any amendment which is not disposed of by the Registrar within 90 days of its receipt, shall be deemed to have been registered under this Act and the provisions of sub-section (3) of this section shall apply to such amendment.

(6) An amendment of the bye-laws of a co-operative society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

Section 17 lays down the eligibility for the persons who may become member(s) of the Society. Rule 9 of the Himachal Pradesh Cooperative Societies Rules, 1971 provides for the subject matter of bye laws. Rule 11 which prescribes the conditions of membership of an individual is reproduced below:-

"11. Conditions of membership of individuals-(1) No person shall be eligible for admission as a member of the society if he-

(a) is an applicant to be adjudicated a bankrupt or an insolvent or is an uncertified bankrupt; or is an undischarged insolvent; or
(b) has been sentenced for any offence involving moral turpitude and such sentence has not been reversed, or has not been pardoned; or
(c) is a minor, except when he happens to be minor heir, or nominee of a deceased member; or
(d) is of unsound mind; or
(e) is not a resident of the area of operation of the society, for the last six months; or
(f) carries on business similar to that conducted by the society of which he wishes to become a member; or

(g) does not fulfil such other conditions as specified in the bye-laws of the society;

(2) A member of a society shall cease to be its member if he-

(a) applies to be adjudicated, or is an adjudicated bankrupt, or an insolvent; or

(b) is sentenced for any such offence as is prescribed in clause(b) of sub-rule(1) above; or

(c) becomes unsound mind; or

(d) leaves his residence in the area of operation of the society;

(e) begins to carry on the business similar to that conducted by the society of which he is member; or

(f) ceases to fulfil such other conditions as specified in the bye-laws for being a member of the society.

A member of a society may be expelled from membership for such other reasons also as may be specified in the bye-laws."

The respondent No.5 had reproduced the relevant provisions of its bye-laws in its reply governing its membership, which reads as under:-

"Bye Law No.5 Subject to the provisions of Bye-laws 6, any individual shall be liable for admission as a member of the society if he is:-

(i) Over 18 years in age and of sound mind.

(ii) Ordinarily resident in the area of operation of the society.

(iii) Of good character.

(iv) A worker in a transport concern or carrying on the vocation of Motor driver, conductor, cleaner, agent, mechanic, fitter or employed by the society in operating the transport business or running the workshops; and

(v) Any other person connected with transport business provided that the number of such persons shall not at any time exceeds 20% of the total membership of the society.

The Court after hearing the parties on 27th April, 2007 had issued the following directions:-

"(i) Whether in sequel to resolution dated 30.6.199 any amendment was carried out in the bye-laws of the respondent No.5-Co-operative Society governing its membership.

(ii) If the amendment was carried out, in the bye-laws of the respondent No.5-Society with regard to its membership, any permission was accorded in accordance with law to the amended bye-laws as per Section 11 and Rule 8. If the permission was accorded by the Registrar, Cooperative Societies, whether mandatory provisions were taken into consideration and if not why?

(iii) If the amendment, as proposed, as is evident from Annexure R-5/B have not been approved why the same have been permitted to be relied upon by the respondent No.5-Society restricting the entry of the new members."

In sequel to the directions issued by the Court on 27th April, 2007, the Registrar, Cooperative Societies, Himachal Pradesh had filed supplementary affidavit. The Registrar, Cooperative Societies had stated in his affidavit that pursuant to the resolutions dated 30.6.1991, 20.10.94 and 11.6.95 a proposal for amendments in the bye-laws of the Society was submitted by the President on 14.11.1994/23.1.1995 to the Assistant Registrar, Cooperative Societies, Dehra. These amendments were examined by the Assistant Registrar, Cooperative Societies, Dehra and it was found that the same were not in conformity with the provisions of the Himachal Pradesh Cooperative Societies Act, 1968. The proposal as intended by the respondent No.5 was returned on 14.2.1995. The Society again convened a meeting of the General Body on 11.6.1995 and consequently, the matter was re-submitted for effecting amendments in the Bye-laws vide letter dated 28.6.1995. The Assistant Registrar again re-examined the matter and found that the proposed amendment in the Bye-laws was contrary to the provisions of Section 11 of the H.P. Cooperative Societies Act, 1968. The Society again re-submitted the proposal vide letter dated 11.10.1996/23.10.1996 and the same was also rejected by the Department. The Registrar had categorically stated in his affidavit that the satisfaction of the Registering Authority is absolutely necessary before registering the amendments in the bye-laws of the Cooperative Society. He had further stated that the Society has been directed not to implement the proposed amendments carried out in the bye-laws of the Society. The

Society could not restrict its membership on the basis of resolution passed as stated hereinabove. The resolutions passed by the Society seeking amendments to its bye-laws were contrary to the spirit of the H.P. Cooperative Societies Act, 1968. The Society cannot be permitted to restrict its membership if a person is fully eligible.

The order passed by the Assistant Registrar, Cooperative Societies was in conformity with law, but the same has been reversed by the Additional Registrar on 9.9.1996. The order was again passed by the Assistant Registrar on remand, but the same has been reversed ultimately by the Under Secretary (Cooperation) to the State of Himachal Pradesh on 16.2.2001. The order dated 16.2.2001 is without jurisdiction. The Under Secretary has failed to take into consideration Sections 11 and 17 of the Himachal Pradesh Cooperative Societies Act, 1968 as well as Rule 9 of the Himachal Pradesh Cooperative Societies Rules, 1971 read with Rule 11 while deciding the matter. The Under Secretary had also not taken into consideration that that the Registering Authority has to be satisfied before registering the amendment in the bye-laws of the H.P. Cooperative Societies Act, 1971. The respondent No.5-Society had been trying its level best to seek the amendments in its bye-laws restricting its membership. The authorities after examining the matter had rejected all the proposals holding them contrary to law.

The upshot of the above discussion is that:- (i) the orders dated 9.9.1996 and 16.2.2001 passed by the Additional Registrar

and Under Secretary, (Coop.) to the State of Himachal Pradesh are without jurisdiction, (ii) the respondent No.5-Society cannot restrict its membership merely on the basis of the resolutions passed by it on 30.6.1991, 20.10.1994, 11.6.1995 and 15.9.1996, (iii) the proposed amendments of its bye-laws by the Society is against the spirit of the H.P. Cooperative Societies Act, 1968 and Rules framed thereunder, (iv) the Society had no jurisdiction to refuse the membership of the petitioner on the basis of application submitted on 2.9.1993, and (v) the petitioner is entitled to be the member of the respondent No.5-Society.

Accordingly, this petition is allowed with costs quantified at Rs.16,000/-. The Annexures P-11, dated 9.9.1996 and P-1, dated 16.2.2001 are quashed and set aside. The respondent No.5-Society is directed to register the petitioner as its member within ten weeks from today.

(Rajiv Sharma)
Judge

May 28, 2007
(sck).